

Constitutional Court: personal income tax on gambling and lottery winnings is legitimate and proportionate 2/28/24



Senior Consultant, Tax, PwC Latvia
Madara Hmelevska



Manager, Tax, PwC Latvia
Viktorija Volta

The Constitutional Court (CC) ruled on 13 June 2024 that provisions of the Personal Income Tax (PIT) Act are consistent with section 105 of the Constitution, which guarantees the right to property. The ruling was passed after the Administrative Regional Court and Riga City Court disputed the PIT Act's provisions requiring payment of PIT on gambling and lottery winnings regardless of what the gambler has paid to play the game. The following provisions were disputed:

- Section 8(3)(20.4) states that an individual's taxable income includes gambling and lottery winnings unless section 9(1)(5) provides otherwise.
- Section 9(1)(5) provides that gambling and lottery winnings of up to EUR 3,000 for the tax year are non-taxable income.

The CC confirmed that the disputed provisions restrict the right of lottery and gambling participants to property because it requires payment of PIT on their entire winnings if those exceed EUR 3,000 for the tax year. However, the CC recognised that this restriction is laid down by a duly adopted PIT Act and has a legitimate goal - to protect other people's rights and public welfare.

The CC explained that PIT on gambling and lottery winnings is geared towards reducing lottery and gambling addictions, as these games can adversely affect a person's mental health and financial position. The CC agreed that the PIT Act provides for a fiscal function that generates central and local government budget revenues that can be used to provide public welfare.

The CC dismissed the argument that the disputed provisions do not meet the objective net principle, under which PIT is only charged on the difference between the actual income and expenses. The CC emphasised that the lawmaker has wide discretion in tax policy, and various types of income can be subject to different tax rules. The CC stated that gambling and lottery winnings are a new income that is not directly linked with any previous investment, and by paying a fee to take part in a game, the gambler pays for entertainment services.

The CC also dismissed the claim that PIT on gambling and lottery winnings is confiscatory because it's being charged on the same money twice. The CC explained that tax is only payable on winnings, which is a new income, and winnings are any winnings that are paid out under the Gambling and Lotteries Act. The CC found that the disputed clauses do not provide for taxing the gambler's money twice, and PIT chargeable on winnings cannot be considered confiscatory.

The CC ruled that the disputed provisions of the PIT Act - sections 8(3)(20.4) and 9(1)(5) - are proportionate and consistent with the first three sentences of section 105 of the Constitution: 'Everyone has the right to property. Property must not be used against the public interest. Ownership rights can only be restricted in accordance with the law.'